

NWX-DOC CONFERENCING

Moderator: Heidi Lovett
October 23, 2014
4:00 pm EDT

Attendee List

	NAME		Company Name
	SPEAKERS		
1	Jessica	Beck-Stimpert	NOAA
2	Terri	Beideman	MAFAC
3	Julie	Bonney	MAFAC
4	Columbus	Brown	MAFAC
5	Susan	Bunsick	NOAA
6	Anthony	Chatwin	MAFAC
7	Samuel	Chi	NOAA
8	Paul	Clampitt	MAFAC
9	John	Corbin	MAFAC
10	Paul	Doremus	NOAA
11	Liz	Hamilton	MAFAC
12	Julie	Morris	MAFAC
13	George	Nardi	MAFAC
14	Robert	Rheault	MAFAC
15	Keith	Rizzardi	MAFAC
16	Earl	Bennett	NOAA
17	Heidi	Lovett	NOAA
18	Whitney	Anderson	NOAA
	PARTICIPANTS		
16	Damon	Morris	Louisiana Dept of Wildlife Fisheries
17	Aurora	Paulsen	Center for Food Safety
18	Christina	Stella	Center for Food Safety
19	David	Wallace	Wallace & Associates

Meeting Discussion

Coordinator: Welcome everyone and thank you for standing by. As a reminder, all lines will remain on listen-only for the duration of today's call until the question and answer portion. At that time, please make sure that your lines are not muted, press Star 1 and disconnect your line - I'm sorry - press Star 1 and record your name at the prompt to be placed into the queue.

This call is being recorded so if you do have any objections, please disconnect at this time and now I'd like to turn the meeting over to Mr. Keith Rizzardi. You may begin.

Keith Rizzardi: Thank you very much and thanks to all the members who joined our conference call for this October conference call. We're going to be discussing the proposed commentary on the aquaculture plan and there are a few other items. Heidi sent out an e-mail earlier this week and I'd like Heidi to start off, if we could, by just confirming the roll.

Heidi Lovett: Sure. Ted Ames. Bob Beal. Julie Bonney.

Julie Bonney: Yes.

Heidi Lovett: Dick Brame. (Columbus Brown). Tony Chatwin.

Tony Chatwin: Present.

Heidi Lovett: Paul Clampitt.

Paul Clampitt: Yes.

Heidi Lovett: John Corbin.

John Corbin: Yes.

Heidi Lovett: (Dave Donaldson). (Phil Dyskow). (Michele Long Eder). (Randy Fisher). Ken Franke. Liz Hamilton.

Liz Hamilton: Yes.

Heidi Lovett: Micah McCarty. Julie Morris.

Julie Morris: Yes.

Heidi Lovett: (Bob Rheault).

(Bob Rheault): Here.

Heidi Lovett: Keith Rizzardi, here. (Henry Sessapesara). (Pam Yocum). I know we have a few other people. George Nardi and Terri Beideman.

Terry Beideman: Yes, I'm here.

Heidi Lovett: Terry is one of our new members, Keith. We also have, I believe, Jess Beck from NOAA.

Jess Beck: I'm here.

Heidi Lovett: Sam Chi?

Sam Chi: Yes, but I think I'm on listen-only.

Heidi Lovett: No, we can hear you Sam. I saw your name earlier.

Sam Chi: Oh really? Awesome, okay.

Heidi Lovett: Good. (Paul Doremas).

(Paul Duremas): Present.

Heidi Lovett: Mike Rubino. I know Mike is expecting to come on soon. I will check for him. Earl Bennett?

Earl Bennett: Here.

Heidi Lovett: Great, thank you. Susan Bunsick and I don't expect our other new members to be on just yet. They might be joining us later but I'll read their names, (Peter Shelley). (Michael Okoneiwski). (Heather Brandon). Okay.

Jess Beck: Heidi, this is (Jess). I just want to let you know that Susan will probably be joining us at 5:00 or sometime after. She's currently on jury duty.

Heidi Lovett: Okay. Great, thank you. I didn't know that. Thank you. That's our roll call, Keith.

Keith Rizzardi: Thank you Heidi and a special welcome to Terry Beideman, the Executive Director for Blue Water Fishermen's Association. Congrats on your appointment to MAFAC and we will all look forward to working with you, Terry.

Terry Beideman: Well, thank you very much and I'm honored to be selected to serve and I look forward to meeting and working with all of you. I plan to listen and learn during today's call.

Keith Rizzardi: I think we're all doing that every day that we're involved in these issues. One other personal note before I start on the agenda, I also wanted to say a big thank you to Eileen Sobeck. I had the opportunity two weeks ago to go up to D.C. for a program with the American Fisheries Society and she attended the program as well.

She actually went out of her way to mention to all the members there that MAFAC is out there and we do work on fisheries' issues and inviting all these people from the public to start taking advantage of public participation opportunities to be part of the MAFAC process was very well received by the folks at the American Fisheries Society.

And I think we can look forward to increased public interest and involvement from their members so thanks to Eileen for arranging that and to the NOAA leadership for letting me be part of that.

There are two other preliminaries before we start our discussion on the aquaculture plan. One is just to remind the members that our notes and our summary meeting report and recommendations for our advisory committee meeting from September are being posted online. I think at this point Heidi they are online; is that correct?

Heidi Lovett: Yes, they are.

Keith Rizzardi: Okay.

Heidi Lovett: We've got no comments to date.

Keith Rizzardi: Okay. So if there are any last minute comments, please let Heidi know. Also we have our announcement out there seeking people to serve on our task forces. At our last meeting as our summary meeting report reflects we agreed as a body to try to obtain some folks to assist our committee on a task force for aquaculture and a separate task force for climate and marine resources.

The notice and the announcement on that was made in the Federal Register. It's been on the MAFAC home page and if any of you folks have people in your communities that you think would be good to serve, you know, let them know. Have them put in their names and pursue the nomination. John, you with us?

John Corbin: Yes, I am Keith. Hi.

Keith Rizzardi: I want to say the major item of business on the MAFAC comments and recommendations on the proposed rules, you guys have done a tremendous amount of work. I really appreciate the systematic way you've worked your way through the proposed rules on aquaculture and I'm looking forward to a dialogue.

This is a set of comments that I think is some of the best type of work that MAFAC can product for NOAA and appreciate all the effort by the subcommittee and I hope the members are ready to have a good dialogue and John I'm going to turn it over to you to lead it.

John Corbin: Okay. Thank you, thank you very much Keith. The subcommittee really appreciates everyone taking the time to participate in this conference call. I

want to acknowledge (Whitney)'s help in managing this process and all the people that took time to provide input and we had quite a few.

NOAA fisheries asked MAFAC to review the proposed Gulf rules and the commerce subcommittee had extensive discussions with members, former MAFAC aquaculture members and resource people participating.

We also benefited from written comments from an industry organization that reviewed the plan. Everyone should have received a copy of the proposed MAFAC comments that highlight the discussions and the recommendations on the issues identified so I'm not going to spend a lot of time introducing each issue.

And since we have some resource people that are here for a particular issue, if there's no objection I would like to start with Issue 12 and then we'll go back to the order. Is everyone okay with that?

With no objection then we'll start with Issue 12 which deals with two questions: does the Army Corps of Engineers require a lease to issue a Section 10 permit under the Rivers and Harbors Act and is a permit under MSA legally the same as a lease?

I must say there are strong indications that the answer to both these questions is no but of course but there were no attorneys on our committee and this could be problematic in providing a commercial farm property rights and exclusive lease which may be needed for financing and insurance. Your recommendation is for NOAA to clarify this situation for potential applicants.

We believe this is really essential to establish a legal foundation to build a multimillion-dollar industry in federal waters so before I ask the resource

folks to comment, are there any comments from members at this point?
Hearing none, Sam and Earl if you'd like to provide your perspective on the issue?

Sam Chi: I guess is there a particular aspect of this issue that you'd like comment on?

John Corbin: Well, you know, you were suggested by Randy Cates because you worked with him on his financing for his offshore farm in Hawaii and if I remember Randy's comments, he had a fair amount of trouble working through the process.

He did have a lease from the state - a 20-year lease - and he felt that a lease is really what is needed to get federal financing through you folks and that you folks had a pretty good perspective on that question so that's why I think you were invited.

Sam Chi: Okay, now I guess the best way to kind of kick this off would be probably to if I could have Earl just talk basically about what a banker would be interested in in terms of a lease or in terms of whatever and then maybe we can try to get to the other issue, lease versus permit later after you've kind of heard this background.

John Corbin: That sounds good.

Sam Chi: All right.

Earl Bennett: This is Earl. What we're looking for that there is an instrument that gives the potential borrower uninterrupted use for the term of the permit or lease and its renewal period that is also transferable and assignable and assignable for

credit purposes. If those things exist it is possible for us to consider that we can take an interest in it.

Sam Chi: In other words what Earl is saying is that, you know, from a functional perspective it doesn't really - the question versus a lease versus a permit - is less important than actually the bundle of rights associated with it and that's really the most important thing.

Earl Bennett: Correct.

John Corbin: Okay. Okay.

Sam Chi: Now be that as it may, as a lawyer who actually does these finances and actually likes to see things, I would actually prefer a lease largely because it's tied to real property and it's tied and because it's tied to real property there are actually adequate recordation mechanisms to be able to record lenders' interests and security interests in that piece of collateral.

Now this is concern is (but) it's almost moot because you're talking about federal water where, you know, it's outside of state jurisdiction so the most important thing at least from a lender's attorney point of view would be that you actually have a recognizable and a cognizable way of recording these security interests so that subsequent lenders or anybody else who's relying on these particular aspects or these particular collateral know that they are actually already encumbered.

John Corbin: I'm not sure I understand the implication of recording. Can you talk a little bit more about that?

Sam Chi: Certainly. Like when you buy a house like you actually have to go and you sign a deed of trust or you sign a mortgage and that actually gets recorded in the local jurisdiction and that tells everybody else who may actually rely on that asset or rely on your credit, if they want to lend you money in the future that that particular piece of property has been encumbered and that there's somebody else is actually first in line, has already given you money for it.

And that same way that's really what needs to happen. There needs to be some sort of mechanism and the nice thing about leases is because leasing state water is that very, very clear because of the state laws who has those rights and who actually has those interests.

John Corbin: So for a permit to be equivalent it would have to have language and have a recording process in place?

Sam Chi: To accommodate lenders, yes.

John Corbin: Okay. Now let me at this time let me just say, you know, the committee looked into this question of permit versus lease when we were looking at MSA amendments and we asked the question to the Office of the General Counsel basically the same question we're asking today.

And we're told that they couldn't provide us a legal opinion. They could only provide NOAA an opinion so with that I reached out to some colleagues to see what they thought about this question. One if a professor and attorney with the Center for Marine Policy at the University of Delaware who's published on leasing federal waters for wind and for aquaculture.

Another is a professor at the university law school who teaches property law, written books on property law, is nationally recognized as an expert in

property law and the third is Deputy Director of our Department of Land and Natural Resources and an attorney. DLNR manages two million acres of state lands and all state marine waters using permits and leases.

And this gentleman was also the attorney for the department for many years and (R.B.)'s actually with that department for many years and they all basically said that a permit is of limited value and scope and a lease is really which conveys property rights and exclusive use is really the document of choice.

So you know, I guess our concern and I think members of the subcommittee share this is that we really need to have the permit as granted under MSA have the characteristics of the lease. One of these gentlemen actually said, you know, the underlying statute enabling legislation, you need to look at that to see what's conveyed by a permit and what's conveyed by a lease.

And if you go to MSA, you know, what I could find is for a limited entry fishery there was some discussion as to what a permit is and it definitely says that it's not a property right so given that as additional information without going into the description of the core issue which requires a property interest according to statute to issue a Section 10 permit.

And if that property interest, well, there was a court case that said that the Corps couldn't, you know, didn't have the authority to validate the property interest so they could grant the permit which is kind of an interesting way to proceed, if you guys like to (just want) further based on that information.

Sam Chi: Sure, I guess yes, I did start out my comments by saying yes, as a lender's council I'd like to see leases rather than permits largely because a lender understands what a lease is. They understand the fact that the lease itself is

usually tied to the ground, it's real property and in other words there are recordation mechanisms.

Now as you point out there are differences between the scope of the lease and the scope of the permit and I think you've kind of hit the nail on the head in saying that, you know, permit's tend to be a little more limited but that doesn't necessarily mean that for the purposes of the banker that it's not something that they would lend on.

Now it really entails that the amount of risk that's involved associated with like foreclosure or with being able to liquidate a position and that's really kind of the key sort of on it so I can't really address the exact question of whether a lease is better than a permit for you all. I can say that as a banker's attorney I like to see leases and I'd rather take an interest in a lease rather than a permit.

But where you guys are talking about your operations in the EEZ it's hard to say that you can get anything but a permit under the availing law and that's a little bit outside of my scope of things because it's really there are other lawyers in NOAA general counsel with much more experience with this than me.

John Corbin: Thank you. Members, would you like to weigh in on this?

(Columbus Brown): This is (Columbus). Does the Submerged Lands Act apply in this particular case where the Secretary of the Interior has authority to make leases for various things in the outer continental shelf?

John Corbin: Well (Columbus) what I understand about that is part of the issue that the core of the issue came up when a project called Cape Wind wanted a Section 10 permit to locate and they discovered that they, well, they didn't have a lease

so what happened is as I understand it is that the law - the enabling legislation for locating and citing wind farms in the ocean - was changed to provide that lease but it's very specific to wind farms or energy I should say and the ocean.

Now this is a very complicated situation and issue and I know we're not going to solve it but basically what we're suggesting is MAFAC ask NOAA to provide some answers to these questions and clarify the process under the rules and really ultimately define what the utility of the permit that's granted is and I think, you know, based on what I'm hearing I think that's still a valid question or recommendation to make.

(Columbus Brown): Okay. Well, I mean, the Submerged Lands Act goes back to the 1950s and I'm sure it's been amended - it goes back to 1953 - and I'm sure it's been amended a number of times but I think that there's stuff in there that might be relevant to this situation.

John Corbin: Okay. Thank you. I think we can move on. I want to thank Sam and Earl for participating in your comments. They were very helpful.

Sam Chi: You're welcome.

John Corbin: Okay. So we're going to move on to the first issue which has to do with permit timeframe and...

((Crosstalk))

Woman: Excuse me John.

John Corbin: Yes?

Woman: John, (Jess Beck) would like to jump in. I'm not sure you're hearing her.

John Corbin: I haven't, no.

(Jess Beck): Hi, sorry about that. I was trying to speak whenever you were trying to move this issue too and I'm glad we're going back to Issue 1 but I just had a question. Has anybody had any discussions with a lender or lenders regarding this issue of loaning to an operation in federal waters that's been issued federal permits as opposed to a lease and has the lending community weighed-in on this at all?

John Corbin: Well, I think we just had a discussion with a lender albeit, you know, a government lender but with the private sector, not to my knowledge, no, we haven't.

(Jess Beck): Okay. Yes, I'm just wondering too and in terms of the guarantees in terms that were mentioned earlier to make a permit similar to a lease, I'm curious myself as to whether this is something that can even be done under authority of the Magnuson-Stevens Act or if it would even fall under any other federal agency's authority.

I mean, we're quite limited under the MSA it seems for this particular issue so it's something that I'd like to continue to research at this point because it just doesn't seem like there's really any way to acquire a lease at this point and I'm not really sure what that mechanism might be, if it's an act of Congress that would be required or if stronger language could possibly be added that might help quell folks' concerns or maybe not.

So I'm happy to look into this more for you guys and work with the office of aquaculture folks to do so.

John Corbin: Very good, I think that's a great follow-on action. You've defined a great follow-on action so...

Keith Rizzardi: John, it's Keith, can I jump in for a security?

John Corbin: Yes, as an attorney please do.

Keith Rizzardi: So one thing that I heard that really resonated with me was the importance of making sure we have a recording mechanism and recognizing that, you know, we are dealing with federal waters so that is sort of unique.

So another alternative here may be for NOAA to develop some sort of procedures so that the lending public can see very clearly who's been given the permit rights, where they can be immediately accessed and how they can see the running list of who has those rights and confirm the nature of those rights.

That could be as simple as, you know, NOAA internally setting-up some sort of process. That said, I just want to make sure that the bottom line of this conversation is to leave the comments as you've proposed as is.

John Corbin: That's my understanding, Keith.

Keith Rizzardi: That's what I wanted to confirm so the comment that you've got on Number 12 would say it simply leaves this in NOAA's hand with us having flagged the issue and said hey, this is something that really needs to be carefully considered.

John Corbin: Yes, no, I'm happy with that and I hope your comment was recorded so we can refer to it later so...

Tony Chatwin: (Joe), this is Tony but just so I understand the process here, is the idea that we're going to go through all of these issues and then have some sort of vote to move the whole thing or are you going to go issue by issue and request approval from MAFAC on each of them?

John Corbin: Well, actually Tony the way we did it in the subcommittee was vote issue by issue and if the group proposed that, I'm more than willing to do that and my initial intent was to go through the whole thing and then vote but what would you prefer?

Tony Chatwin: I don't care either way honestly. It's just it's important to know what the process is because if we're going to go back to Number 1, it may be better for you to get your agreement per issue so that you know that that part of the business is done but Keith what do you think?

Keith Rizzardi: I think in terms of getting all the members an opportunity to contribute most effectively, it's probably best to have at least an opportunity for people to speak up on each issue.

I'm not sure if we're going to have a lot of division or not on each individual issue and whether they can be voted on together or not but I would certainly encourage us to open up the conversation on Number 12 right now to other members.

Julie Morris: Keith and John, it seems like we do have a public comment period and it's always awkward to vote on things before you take public comment.

John Corbin: Very good point Julie so I think that dictates that we need to go through the issues and then vote at the end so with that as a process, I'd like you to move to the first issue which again has to do with permit timeframe and renewal language and we're concerned - MAFAC is concerned - that the terms chosen ten years and five years' renewal are too short and could significantly affect private sector interests in investing.

The terms could reflect the experiences in state waters which are not new. They represent decades of experience with fin fish and really more than a century of experiences with shellfish so the recommendation suggests that the initial term for a permit should be 20 years and a renewal period of 15 and at the minimum should be raised to 15 and ten, at least it should be longer than what it is now.

And these terms would be more consistent with commercial leases in state waters and then the other part is in addition rules should allow automatic simple administrative renewal if the project is in compliance so that was his second part of the recommendation. Member comment?

Julie Morris: John, this is Julie. I think the recommendation would be strengthened if you could name the states' waters that you refer to in the first paragraph of the recommendation, just list...

((Crosstalk))

John Corbin: Okay. That's Maine and Hawaii were the two, okay, I can do that.

Julie Morris: I think adding that would be good and then it seems like the way you're constructed the second paragraph, you're saying don't make this change now but make it after the rules are adopted and I think that's really wise and as I

was reading through the whole document it seemed like there were times when that was the position that we were taking.

But there were other times when we're asking for something to be changed before the rules are adopted so I think we need to be consistent throughout on that point.

John Corbin: Yes, I think Julie, you know, we weren't happy to hear since that the rules implement the specifics of the plan and to change the rules, you need to go back to the plan.

That wasn't something that we - but we understand that - and I think the point is we really don't know what can be changed in the rules to both clarify and improve some of these issues but I understand your point and we can go back and do some editing with that in mind.

Julie Morris: Thank you.

John Corbin: Okay. Moving on to...

Tony Chatwin: So, I'm sorry to do this but because of the process that we've chosen, I need to go back to Number 12. In conjunction with Number 1, it seems that we MAFACs now is recommending a process that will convey property rights to those who receive permits. Could you put those two together and see it that way?

Here we're asking NOAA to on Number 12 to clarify the process but the language here says the rules and utility of the permit, i.e., for conveying property rights and protections. Exclusive use I'm fine with, it's the property rights issue that I am a little concerned.

And when you look at that in context with the automatic renewal, that will reinforce this idea of property rights and I think that they might - I'm not sure - that that's I don't think we're looking to assign property rights in the ocean. Is that we're seeking to do here as a body?

John Corbin: If we're talking about implementing something that looks like a lease, yes, that's what we're talking about so Tony I think I understand your concern. Anyone else with comments?

((Crosstalk))

Jess Beck: This is Jess. I just want to make a clarification here. I have to apologize that the last paragraph here that talks about making the changes using the framework procedures that are outlined in think in Action 10, I misspoke last week whenever we had our call.

These are actually the permit duration and renewal period is actually not subject to those framework procedures which takes a shorter amount of time in order to make those changes. It would actually have to go through an amendment process with the council so I apologize for the error there but the framework procedures would not apply to making changes to this particular action.

John Corbin: And if I recall you said it's two years to amend the plan, it's a two-year process as opposed to an 8 to 10-month process with the framework change?

Jess Beck: It's typically well and those are rough estimates of both of those procedures. It really the framework process there's I believe that there's a 60-day comment

period that you don't have to go through at some point so it does shorten the process quite a bit.

But depending on the extent of the changes for the framework procedure, if it's something simple, yes, it can be done in less than a year's time for the most part and for an amendment, amendments typically take about two years but again it depends on the scope of the changes as well so you can look at it as, you know, and in those terms but those are just rough estimates.

John Corbin: I see, all right.

Liz Hamilton: And this is Liz...

John Corbin: Yes, go ahead Liz.

Liz Hamilton: ...ask a question, it might be naive but I've shared concerns with what I think it was Tony just voiced and what I'd like to know is how a lease or permit that implies a geographic temporal and conditioning compares to property rights.

I think of property rights like I own it, might be encumbered so I think of lease and permits as things that have a time and geographic and conditional scope to it.

Keith Rizzardi: John, it's Keith, can I jump in here?

John Corbin: Please.

Keith Rizzardi: I think the narrative you have here does a good job of identifying the issue and you're trying to send this issue back to NOAA for further consideration. I share the concern that I don't think MAFAC prejudged whether or not it's a

property right and I think if you simply change that word in that last portion of the recommendation from property rights to sufficient rights, it would leave the question open for NOAA to resolve.

Paul Clampitt: Yes, and this is Paul Clampitt. Just speaking to the same thing - the concern Tony has - as far as property rights, you know, in the IFQ fisheries we're not purveyed any property rights and our programs are looked at every five years and it can be changed radically yet we have no issue getting bank loans on the right to go fishing or the right to hold a quota but they're not property so I don't think it's necessary.

John Corbin: Well, it depends on the lending community as to whether it's necessary in order if it's equivalent to fishing. I think that okay Paul, I understand your comment. Can we move on to Issue 2 which deals with the permit fee and basically administrative costs for...

Tony Chatwin: I need to understand whether you're going to make the change or not - this is Tony - because...

John Corbin: I think we're going to vote on amended recommendation at a later time, I guess...

Keith Rizzardi: I agree John. I think Tony's simply trying to clarify what is actually going to get voted on and we probably do need to resolve that before we have the public comment and the vote so the issue here is the very last line of the second to last paragraph where it says conveying property rights and protections. If we simply change that to conveying sufficient rights.

John Corbin: Deciding about Issue 12 now?

Keith Rizzardi: Yes, I'm talking about Issue 12.

John Corbin: Okay.

Keith Rizzardi: The terminology that's causing concern for some of our members is whether or not we're giving up property rights in the ocean so if we change that to sufficient rights, leave it open-ended as to what the nature of those rights are and then let NOAA deal with its rulemaking process, we've addressed your issue.

I think you've given enough of a narrative to understand it and then we let the agency make its decision.

Tony Chatwin: Yes, I think that's a good suggestion, Keith.

John Corbin: Okay. I'm okay with that suggestion. (Bob) would you like comment?
Hearing none, so it will be sufficient as opposed to property.

Tony Chatwin: Thank you.

John Corbin: Okay. Moving on to the permit fee, MAFAC was (unintelligible) costs were considered and we really support this approach to cost recovery and simply want to make that comment. Any member comment?

Okay. Moving on. Issue 3 deals with brood stock sourcing and the stock having to come from a population or a subpopulation of fish where the facility is located and this causes some concerns to the industry.

We understand that the concern over species from outside the Gulf recognizing that we need Gulf native species and but there's a concern that

there's not sufficient species distribution information to allow the industry to site and source brood stock with this geographic limitation.

So the recommendation suggests that NOAA clarify the availability of population distribution information for potential target species and what is being done to build that really important database.

And that also the council explore or NOAA explore changing the requirements to permitting or sourcing brood stock from the entire Gulf and develop a certification of origin process for the brood stock and fingerlings to satisfy the requirement probably using genetic mapping technology. I hope I explained that adequately. Member comments?

Julie Morris: Yes, John this is Julie and in the last sentence in the first paragraph above the recommendation, I'd feel better if we replaced the word restrict with prohibit because that was the council's intent to prohibit sourcing of brood stock from outside the Gulf.

John Corbin: Okay.

Julie Morris: It's a stronger word there and then in the recommendation I disagree with the suggestion that the council should explore changing the requirement to permitting sourcing from the entire Gulf. There really are, you know, local stocks in the Gulf and the red snapper in the Western Gulf are different to a certain extent from the red snapper in Eastern Gulf.

And I think that whole recommendation works if you just drop that comment about the entire Gulf and it would just say MAFAC suggests that NOAA develop a certification process of origin for brood stock and fingerlings to satisfy the requirements in the rule.

John Corbin: Okay. Other comments?

Jess Beck: This is Jess. I have a question exactly what you mean or have in mind in terms of the certification process of origin. What exactly do you all see that as being?

John Corbin: We didn't go into a lot of discussion but I would imagine it has to do with identifying genetic makeup of species in the Gulf and being able to use those tests for brood stock and fingerlings that are in hatcheries.

George Nardi: John, this is George.

John Corbin: Yes, George, go ahead.

George Nardi: And just to answer your question, you're asking for the same sort of thing we were asking for. We were asking NOAA to clarify this because it's a bit ambiguous. Just like Julie said there's certain specific differences with the red snapper.

There may be also migratory species that we would like to culture that move around the Gulf and could be found anywhere and there could be different subpopulations that inhabit the same area at different times of the year so, you know, some stay still, some move so we needed, you know, this further clarification here. You know, what would satisfy this process?

Jess Beck: I guess my question was when you talk about genetic testing and things of that nature, I mean, is that something the applicant would have to do? Is that something that the agency is expected to do? I mean, we're talking about quite a bit of money and effort to identify subpopulations if that information doesn't

already exist and we've already had the conversation with the group last week that species that will primarily be targeted such as red drum, cobia.

Julie mentioned red snapper. There's already quite a bit of information and my feeling is it's just pulling together the information at their science center or researchers throughout the Gulf of Mexico so I think that a lot of that information is already out there. It just needs to be tightened up and put together in a neater package for folks.

(Bob Rheault): So this is (Bob Rheault) here and I just I think all we're asking here is that NOAA clarify the ground rules before (they to the rule) so it's not a moving target once an applicant gets in the process.

We just want to know what is expected, what process is being used, you know, what can we expect because right now it's very unclear to an applicant as to how the rules are going to be created.

John Corbin: You know, and I would add that, you know, I think the recommendation should be silent as to who pays. What we want to focus on right now is clarification of this certainly process. Other member comments? I have two changes, the change to the word prohibit and then to eliminate a requirement, the request for the brood stock from the entire Gulf. Okay.

Hearing none, we'll move on to Issue 4, allowable aquaculture species and this particularly deals with the GMO and transgenic species and the recommendation states that MAFAC agrees with the prohibition on GMO and transgenic species and the requirement the culture of federally-managed native species but we find the language confusing.

And we'd like the language to be revisited and see if we can make it a little bit more understandable and then we request additional language and this was a concern from industry that clearly indicates that the rules do not prohibit a farmer from using commonly-applied breeding techniques.

And then another issue that NOAA actually asked for comment on is we support removing the terms genetically modified organism and use the term genetically engineered animal to be consistent with FAA terminology so member comments on Issue 4?

Tony Chatwin: Yes, this is Tony. I'd like clarification of the paragraph following the genetically modified organism paragraph. We don't agree about the importance of disease transfer.

John Corbin: Right.

Tony Chatwin: What does that mean?

John Corbin: Let me just find it here.

Keith Rizzardi: Where are you Tony?

John Corbin: Yes, where are you Tony?

Tony Chatwin: Recommendation 4 under well Issue 4, there's a first recommendation, third paragraph. Industry does not agree - oh wait - am I...

John Corbin: You're getting ahead of us.

Tony Chatwin: Sorry. It's the way my document is - sorry - I'll just wait.

Woman: Hold that thought.

John Corbin: Okay. Any other comments on Issue 4? Okay. Issue 4 stands as written and (goes) forward. Issue 5 deals with the production caps, MSY and OSY and the council we understand the council spent a lot of time and effort deliberating these. Regardless industry finds the caps arbitrary and really counter to a national policy of increasing domestic production.

Production targets should be dictated by the site characteristics and calculation of carrying capacity so the recommendation requests specific language clarifying that there is a process to change MSY and OSY values based on industry performance and that process should be clearly spelled out for the industry's benefit. Member comments on Issue 5?

Jess Beck: Right, and this is the framework process that you mentioned in Number 1 or...

John Corbin: Well, it's either the framework or the amendment process Jess. Which is it for this particular item?

Jess Beck: This is the - yes, I have a note on here in my copy - it's actually the framework process and if you look on the last page of the rules, the last two paragraphs, that is talking about the action that deals with framework procedures.

And in Part A of that last page it says for the fishery MSYOSY, those are the things that can be changed via framework procedures so that information is already included in the rule.

Now I should mention that in terms of the actually step-by-step process for a framework that isn't something typically included in a rulemaking, it's actually not even something that's in detail or detailed in the plan itself so I'm not sure if that's what you folks are asking for or just the mechanism for actually making these changes which are the framework procedures.

John Corbin: Well, I think it's both. I think we need to understand what the procedure or process is. I seem to remember you indicating there'll be a guidance book to go along with rules and the permitting process. Would that be a place to spell out the process in detail?

Jess Beck: No, actually that's more for applicants or potential applicants giving them an idea of the various requirements by agency which they would have to put together and abide by in order to submit an application so no, that would not be the appropriate place because this is more of the action of the council and what their process would be.

Julie Morris: So John it sounds like there's - this is Julie - it sounds like it's already explained in the draft rule announcement, just at the end instead of at the beginning so maybe this recommendation is moot.

John Corbin: Well, I'd ask George and (Bob) to comment but my what I'm hearing is that we really don't know what the detail process is for the framework process and we'd like to see that in writing somewhere and maybe it could add a little bit more language to the rules or add an appendix to the applicant guidebook. George, (Bob), you have any thoughts?

George Nardi: This is George and since these are just our recommendations I think I'd like to, you know, offer, you know, my opinion is that at least for the subcommittee we wanted to go on record as we understand why these caps

have to be in there but simply going on record and saying, you know, we do think they're kind of arbitrary and so forth.

I don't feel strongly about it one way or the other but I do feel like it should be mentioned.

Jess Beck: And this is Jess again and I apologize but I'm getting things a little mixed-up here. When you're talking about the actual steps in the process for this procedure, I'm looking now at the FMP in an action, Action 10 Preferred Alternative 3 starting on Page 95 of the plan, there are details about this particular process and I'm sure that it probably varies just depending on the issue throughout the council.

But for changing these things that I mentioned via the framework process, there are specific details laid out in the plan and that includes the appointment of an aquaculture AP to meet at least biannually which I mentioned on the call last week.

And just so folks know too, I was at the Gulf Council meeting yesterday, gave those folks an update on that because a lot of the council members that originally passed this plan were no longer there so this was sort of a refresher for them.

And at the end our regional administrator Roy Crabtree asked the council to start thinking about pulling this AP group back together so it looks like that's something that will happen sometime in January.

I believe they're going to solicit for all the advisory panels at that point so there is information in the plan that talks about what these framework

procedures are, you know, what can be changed via framework procedure so I don't think that you really need to have that particular comment in there.

I would just suggest go back and look at this action again on Page 95 - starting on Page 95 at the very bottom of the FMP - and see if that gives you enough detail to satisfy your concerns here.

John Corbin: What I'd like to suggest is George's comment about we want a note that we think these caps are arbitrary and counter to national policy, etcetera, maybe we change this recommendation to a comment and basically have that statement and then make reference to whatever sections are necessary to describe the framework process.

Woman: Right John so the comment could be that MAFAC urges I don't know NOAA and the council to...

John Corbin: Revisit these...

Woman: ...not revisit but, you know, point potential applicants to the description of the framework process that's laid out in the management plan for adjusting MSY and OSY.

John Corbin: Yes, that would work for that particular part of what I'm suggesting, sure. Any other comments? Any disagreement, any objections to revising the recommendation as described?

Keith Rizzardi: John, Keith. I'm just looking for some clarity as to exactly what we're eventually going to vote on that recommendation.

John Corbin: Okay. I guess your recommendation would be a comment that notes that MAFAC feels that the caps on production are arbitrary and may be a disincentive to investment in certain cases. We understand that they can be changed and there is a process that is in the plan that can be used to make those changes after some experiences was gained, something along those lines.

Keith Rizzardi: Can we do that without saying that the process is arbitrary?

Woman: Yes, that stings a little.

Keith Rizzardi: Like it should.

John Corbin: (Bob), George, any wordsmithing on arbitrary for me?

George Nardi: I'm just thinking you could do without that clause altogether and just make your point that you have that, you know, we recognize that this process may be subject to change.

John Corbin: Well, I'd like to call it a disincentive, how about that?

George Nardi: I'm okay with that. I understand it has impact on industry and industry may not be inclined to make an investment if there are limited put upon them and that's part of the policy process but I didn't want to go so far as to tell NOAA that we think it's arbitrary.

(Bob Rheault): All right, so let me just point out that I do think that it's very important that the targets should be based on (unintelligible) capacity and that the individual cap is a disincentive so if we lose that first sentence that it's arbitrary and retain the other two points, I'll be a happy camper.

John Corbin: That sounds good so any further comments?

Woman: Seems like you really feel like they're too low. I mean, you could say they're too low.

John Corbin: Okay. We will, thank you so with those - go ahead.

Woman: I was going to say if you have a suggestion - if you all have a suggestion - I mean, should they be doubled, tripled, you know, what? I mean, that would also be helpful.

(Bob Rheault): They should be based on site characteristics and...

((Crosstalk))

Woman: That's right, that should be based on but there's not to be...

((Crosstalk))

John Corbin: It's science here, you know, not the dartboard approach, you know.

Woman: Right, right, but what I mentioned also too is that for the NEPA process - the National Environmental Policy Act process - the council and NMFS created an environmental impact statement for this and there had to be limits that were analyzed.

So there was a range of limits I think from 16 million pounds annually to 192 so if it's raised from 64 million pounds, there would have to be additional

analysis that's requires so just leaving it open-ended wouldn't really be all that helpful.

It would be better to have an idea of the actual and it seems like to me from a lot of these conversations that industry is saying, you know, 12.8 million pounds for year for my farm is not enough, you know, well what would be enough so, you know, it's that sort of inform would be really helpful because analysis does have to occur for environmental purposes.

John Corbin: I understand. George is the only bona fide fish farmer on this call. What do you think?

George Nardi: I agree with (Bob)'s comment. I'm pretty happy with...

John Corbin: But we double it still, I mean, so we give...

((Crosstalk))

(Bob Rheault): We need to put some fish farms in the Gulf and see what happens and then it'll become obvious what the current capacity is.

John Corbin: Right.

Woman: I think we should leave it as (Bob) has proposed and if these are MAFAC's comments and if someone in the industry would like to comment on a particular target, they can do that.

John Corbin: Okay.

Heidi Lovett: For note-taking purposes - this is Heidi - I just want to clarify it sounds like right now that second paragraph starting with MAFAC finds that the caps on production are too low and that the rest of it is the language you want to keep. Am I hearing that correctly?

John Corbin: I think so Heidi from my perspective, yes.

Heidi Lovett: And the recommendation portion is being struck and it's a comment and it's opening instead of regardless your comment is MAFAC finds the caps in production are too low, etcetera, etcetera?

John Corbin: That's the way I think we've - that's where we've arrived - yes, I think so.

Heidi Lovett: I just wanted to just clarify that for everybody because it was getting a little hard to hear.

John Corbin: Yes, I hope you're taking better notes than I am.

Heidi Lovett: Well, we will have a transcript but we want to make sure we capture the notes sooner than we'll get that transcript.

John Corbin: Okay. Okay. We're going to move on to Issue 6 which deals with the timeframe to get gear and fish in the water and the rules currently propose times of two years to install infrastructure and three years to put fish in cages and we feel this is too short.

So the recommendation suggests timeframes be changed to three years, infrastructure four years for fish in the water and addition clarify that the time to action not start until the last permit is gotten which is the NOAA permit so member comments on this recommendation?

Julie Morris: So John this is Julie. This is one of the instances where it seems like we're asking them to change something in the rule that would require going back to the council.

John Corbin: It probably is, yes or maybe I should add, is it? Jess, can you help us here?

Jess Beck: Yes, it is, it is and actually Julie was on the council at the time too so yes, she's correct.

John Corbin: Okay. So we can blame Julie for this.

Julie Morris: That's right, it's all my fault.

John Corbin: All right, Julie. So it is. And we acknowledge that some of these issues and recommendations are going to have to be for the future and not immediate I think?

Julie Morris: Right, and that's not clear. In some of the recommendations they're worded in a way that says don't go back to the council about this but when you get ready to amend this down the road, put these in as soon as possible.

Jess Beck: I think the idea was to not boggle down the process and stop the process right now but rather wait until the regulations are in effect and then go back to the council. I think that for all of these suggestions or changes, that was the plan, correct, John?

John Corbin: Yes, I think that's where we went to, yes, exactly, yes.

Julie Morris: So I think the way it's written now, that's not clear. It's stated in some of the recommendations and not in the other recommendations so just go back through and edit the whole thing to make that clear.

John Corbin: Okay. I think that's clear.

Julie Bonney: John, this is Julie Bonney. I just one other clarification on this.

John Corbin: Yes, go ahead.

Julie Bonney: There's two recommendations in here. One is to change the timeframe to three and four years but also the second is to clarify when the clock starts ticking so that portion of the recommendation wouldn't require any change on the council's side I wouldn't think. It's just a clarification from NMFS in terms of when the clock starts.

John Corbin: Good point Julie.

(Bob Rheault): So are we needed or not? Can anybody hear me?

Keith Rizzardi: We hear you, (Bob).

(Bob Rheault): Excellent. I'm just thinking that perhaps we just leave these suggestions about the timing of these changes at the end and say that if any of these changes are going to delay implementation, then we don't want them to hold up the show but anything that can be done without requiring, you know, opening up an amendment process should be done as soon as possible. How about that?

Julie Bonney: Good suggestion.

Jess Beck: Sounds good.

Julie Bonney: And just about the time starting in terms of when the clock would start for the two years, within the action itself and this is on Page 43 of the FMP, this is the first piece under the operation requirements and restrictions talking about at least 25% of the systems have to be placed in the water within two years of issuance of the aquaculture permit.

So an allowable species must be placed in the system within three years of the issuance of the permit so I think you can take that piece out about clarification on when the clock starts because it's right there.

John Corbin: Okay. I guess the question is, are all the permits in place when the clock starts. Is that what...

Julie Bonney: Correct, so NMFS would essentially be in this. It's something that the council wrote into on the FMP and it is in the rule that or I'm not sure if it is in the rule actually but it's written in the FMP and the intent of the council was that the last permit that would be given would be the NMFS Gulf aquaculture permit and that would be after all other permits were received.

And I just want to clarify that that means that not that they have to go through the other permitting processes before they begin to go through our application process. That's not happening in tandem but what will occur is folks like myself and the point of contacts for the Army Corps and the EPA we will be in contact with each other.

And whenever we're getting close to permitting a facility and we'll be working together throughout the process I should mention also but whenever we're getting close to permitting a facility, we will be in touch with each other

to see where the other agencies are so we can issue all of our permits around the same time or at the same time so that particular applicant would get all permits essentially at the same time.

George Nardi: So you're saying NOAA would hold off its permitting finalization until for example you have your NMFS permit from EPA?

Julie Bonney: Correct until we knew that they were going to issue that permit imminently, yes.

George Nardi: Okay.

Susan Bunsick: Hi, this is Susan Bunsick. Am I unmuted?

John Corbin: Yes, go ahead.

Susan Bunsick: Oh hi, I'm joining late but you may have talked about this. Jess can you clarify on Page 98 of the Gulf rules it says regulatory changes that may be established or modified by the RA to regulatory amendments include and it goes A through G and D does say operational requirements and restrictions.

So I guess I'm not clear as to whether what we've just been talking about putting things in the water within a certain timeframe can't be modified by a framework. Can you just clarify that?

Jess Beck: Yes, it can be modified by framework.

Susan Bunsick: It can be, okay, thanks. Sorry if you've already talked about that but I'm going to mute myself now.

John Corbin: Okay. Thank you Susan for that comment so what I'm hearing do we need a recommendation for this issue? What's the pleasure of the committee?
George, (Bob)?

George Nardi: From me it's I'm okay. you know, I'd like to see it in but it clarified the intent that whether it's through framework or timing we'd like or in future years we'd like to see it extended so, I mean, it's a comment where - it's a recommendation - we're making but I guess it's not going to be able to be taken-up for public unless (amendment) or was this a...

John Corbin: This is a framework so my sense is that even if this can't be addressed immediately that our review suggests that it should be longer and we should probably keep this recommendation in some form.

Julie Morris: John this is Julie Morris. I thought that Jess was saying that middle sentence about clarifying that the clock doesn't start until the last (curtment) has gotten doesn't need to be there because that's already in the plan.

John Corbin: I agree.

George Nardi: Yes.

John Corbin: I agree with that. Okay so okay hearing no other comments, we'll move on to Issue 7 which deals with minimum distance between operations and it's proposed to be 1.6 nautical miles and here's where the disease issue - the primary concern of the council - was disease transfer and industry does not agree that the importance of disease transfer warrants specific distance between farms.

Oceanographic conditions and current patterns could justify a closer distance so the recommendation suggests that the proposed minimum distance be dropped in a case-by-case evaluation of carrying capacity of a location and species being grown be considered as well as the concerns of the farmer so member comments?

Julie Morris: John this is Julie Morris again.

John Corbin: Yes.

Julie Morris: Seems like we were also concerned about the bottom conditions and the (bemphose) effects of things being too close together and so I don't think it was just disease transfer but and then the example that you give about farming oysters next to the fish farm, I'm not - (Bob) can correct me - but I don't think anybody is farming oysters in the Gulf EEZ and I'm not sure is that something somebody could do (Bob)?

(Bob Rheault): Well, actually in an earlier call because it's not a federally-managed species it wouldn't necessarily apply so I think we should strike that sentence...

Julie Morris: I would agree.

(Bob Rheault): ...but certainly striking growing mussels is something that is under consideration by current growers.

Julie Morris: I'm with you on striking the sentence.

(Bob Rheault): Okay. We'll strike that sentence.

(Columbus Brown): Hi, this is (Columbus). I just want to add to Julie's comment. One of the considerations that the council is considering was the transfer of disease to native populations that were not constrained by a series of nets or on the farm so disease transferred from the farm to free roaming species is a major concern that was expressed by NOAA (the) scientist.

John Corbin: Thank you (Columbus). I think we agree that it is a concern. It's just we don't want to minimize that concern. Is there a basis for 1.6 nautical miles beyond the potential for disease and bottom nutrient build-up?

Julie Morris: I'm reading the discussion of this piece of that preferred alternative for that particular action and basically it is the paragraph or so discussion about the fact that there are various defenses that are accepted in the literature but that was just sort of it seems like a compromise for the council.

There isn't a discussion about that particular piece in regard to the bottom. There is a discussion in regards to the bottom whenever it comes to the fact that there's a requirement for the site to be two times as big in the area encompassed by the systems to allow for fouling a rotation purposes.

So that's really where the bottom environment concerns come in, not necessarily this 1.6 nautical miles distance which was primarily for disease and pathogen transmission between facilities.

John Corbin: Okay. I might point out that these farms are going to need an NMFS permit and they're going to have to meet some kind of receding water standards and bottom standards to operate so okay, what is the pleasure of the committee on this?

We'd like to see more flexibility in the distance between farms than have it dictated by science, carrying capacity and oceanographic conditions. That's the essence of a recommendation. Hearing no other comments, the recommendation will go forward as written.

Julie Morris: John, it seems like the point that (Columbus) made that it's not just the concern of transmission between farming operations but also disease transmission to wild populations could be...

John Corbin: We can add that to the discussion part.

Julie Morris: ...yes, add that to the issue part.

John Corbin: Okay.

(Columbus Brown): Well, actually but this is very - this issue - is related to the distance between farms and it's related specifically to the issue of disease transfer between farms and it doesn't address the issue of disease transfer to the wild population or for that matter from the wild population to the farm so I think that it would be out of place to put that comment here.

Jess Beck: This is Jess. I agree that that really wasn't something discussed about this particular point by the council so I think it would be out of place.

Julie Morris: Okay.

John Corbin: Okay, (Columbus), I think you have some folks that are taking a different point of view and I would like to suggest that we not include that comment so moving on, Issue 8.

This deals with exclusive use of the site and permitted uses and the council created a mechanism to establish a restricted access zone around the permitted facility and the prohibited activities are recreational and commercial fishing only. This could be problematic with other uses.

So the recommendation suggests that it needs to be clarified if NOAA or the council have the authority to regulate ocean recreation and ecotourism at a farm site and, you know, some flexibility might be desired to allow farmers to offer recreational fishing opportunities or ocean recreation or even ecotourism opportunities to generate additional revenue at the company's discretion so with that member comment?

Julie Morris: This is Julie Morris.

John Corbin: Yes.

Julie Morris: And the idea of fish farm generating additional private revenue for themselves based on ecotourism opportunities and recreation based on fish farming seems wrong to me. You know, we're providing a permit for fish to be raised at these locations and to piggyback on that, charging people for ecotourism seems like nothing that we intended.

So I would be happy if we could drop the clause generate additional revenue in the recommendation and there was a lot of discussion about this issue and actually the commercial and recreational anglers were pretty unhappy about the exclusive use of the site and the buffers as sort of loss of public access to the waters that would be within the farm area.

And the aquaculture industry people were the ones who were promoting that idea in order to create a buffer that they could control so that they wouldn't have to worry about intrusions by other users.

John Corbin: Yes, I think it's central to this is control of access. In Hawaii we have what's called negotiated exclusivity and it's part of the permit process and the condition permits and point of fact it could be used as a bargaining chip to deal with community and community issues too.

So I think I'm okay with to generate additional revenues eliminating that but the essence of the recommendation I think is a good one. Other comment?

Jess Beck: This is Jess. Just hold on one second, this is Jess. I just want to point out that the real discussion in the FMP centers around potential (facy) issues, losses of equipment, entanglement with fishing gear and cages and moorings and things of that nature and also risk of poaching from these facilities by people that shouldn't otherwise be there.

So other than, you know, just desire to "control" an area operators it seems and the discussion in the FMP alludes to the fact that there are primary concerns of gear entanglements, loss of gear, poaching, things of that nature so that's really what's discussed in the plan.

John Corbin: So there's really two aspects here. There's giving the company discretion to allow these kinds of additional activities - non-fish-farming activities - and then there's the control by the permitting agency to be able to keep them out of the - have the authority - to keep them out of site because if they start, you know, if they go on independent of the farm operation, this is a big problem.

George Nardi: And John this is George and I'm for striking to generate additional revenue and I think, you know, the farm that's out there and the fishermen that are out there, they get to know each other, you know, and we had at our site we permitted at our discretion commercial fishing on our site and we learned to live together, you know, and as long as we didn't tangle gear and everyone was conscientious of that.

So I'm all for, you know, allowing the company to get this permit at their discretion to cooperate and allow other users to benefit from the area, you know, if you've got an operation out there, you get to know others that are working in your backyard and, you know, it should be up to that company and the people out there to decide that.

John Corbin: Yes, and that's exactly the way it's worked here in Hawaii also George so what I'm hearing is we'll strike to generate additional revenue and then the language of the recommendation of the issue go forward as written.

(Bob Rheault): I would support that too. It's how we do it in Rhode Island. You get exclusivity to the degree needed to conduct your operations and you negotiate the rest of it and it does make for a real challenge getting a permit if you have a de facto exclusivity zone, you'll get a lot more of a battle than if you can negotiate that.

John Corbin: Okay. Thank you, (Bob).

Heidi Lovett: I just want - this is Heidi - I just want to do a time check. I have 5:23 on my computer. I just want to make sure that everybody's comfortable continuing the call to, you know, a conclusion which seems to be going beyond 5:30.

Woman: Heidi, I have to leave at 5:45.

Man: Heidi, do we have anybody for public comment?

Heidi Lovett: We do have some members of the public that are listening in. I don't know if they wish to comment at this time.

John Corbin: So what we're 11:30 that's okay. We try to move through the rest of the issues and see where we get?

Woman: Sure, sure, let's do that.

John Corbin: Okay. Moving on to Issue 9 deals with brood stock fishing and the rules have some specifics in there, 30 days in advance notice and indicating the specific date and location and (this gentry) finds this really unrealistic and the recommendation requests that more practical and farmer-friendly process. Member comments? Hearing none, the recommendation will go forward as...

((Crosstalk))

Man: I don't know. I think that the Gulf council has experience with collections. I know a number of aquaria within the southeast have gotten permits to select various species within the Gulf and I think rather than put things into the context of what happens in other places, I think we need to be respectful of what truly happens in the Gulf.

John Corbin: Okay, Jess if you could research that for us, we'll see if that's something that we can provide a comment on in the issue discretion.

Jess Beck: I'm sorry, I just was looking at...

John Corbin: Moving on, Issue 10 deals with operational landing of the harvest and this rule specifies 72-hour notice and then a window of 6:00 am to 6:00 pm to offload to dealers and MAFAC finds these restrictions problematic.

The recommendation suggests that landing and offloading procedures be more farmer-friendly and market-friendly. Aquaculture has an advantage in a shorter time to market and this kind of compromises that advantage so member comments?

((Crosstalk))

Woman: Go ahead.

Paul Clampitt: This is Paul Clampitt. Yes, this is the exact same rules that we have when we deliver IFQ fish and, you know, all you have to do is you have to do it - you have to give them - 72 hours but after that, I mean, the way they handle it is a little less restricted than it sounds because, you know, you tell them you're going to deliver within, you know, you give them three days' notice but you can deliver inside that three-day period.

They just want the option basically and the idea is that they want to make sure you're not selling any poached fish.

John Corbin: So it sounds like some clarification is needed here. Any other comment?

Julie Morris: Yes, I mean, this is Julie Morris again. It seems like this is standard procedure for landing of fish in the Gulf of Mexico. We have a lot of trouble with enforcement and the sure spot landing location is where enforcement can intercept and check and so I support this and do not support the recommendation.

John Corbin: Okay. Other comments against moving this recommendation forward?

(Columbus Brown): I agree with Julie, this is (Columbus).

John Corbin: Okay.

Keith Rizzardi: So John in light of the discussion we're having and then looking at Issue 10 and like it's written, I mean, you also have in here just even in the findings, MAFAC finds these restrictions problematic and now we've heard from our members that, you this is standard in the Gulf, this is standard in the Pacific.

John Corbin: Yes, it's standard for fishing, it's not standard for aquaculture. I think that's the whole point.

Keith Rizzardi: That's the point when Paul when you talked about your landings or you landing, is that mainly dead fish, frozen...

Paul Clampitt: IQS.

Man: Oh yes, it's dead.

Keith Rizzardi: And when you're talking about Julie's standard in the Gulf, is it mainly shellfish or dead fish, you know, the big issue for us is off at one way is live fish in trying to get these fish out to the site which could often happen by the time you get from the hatchery to the pier to the barge to the site, it's not unusual to be putting fish out at midnight in aquaculture.

It's not unusual but to have a live market to want to bring fish into and get to some market the same day so I think we'd need to notify enforcement but

being this restrictive right off the bat, I mean, it could be a problem and that's what we're saying.

((Crosstalk))

John Corbin: That's a fairly mild open-ended recommendation as well.

Paul Clampitt: Right. Just asking to be more farmer-friendly and try to find a way to make it more adaptable, that's all we're asking.

John Corbin: And that's really the mindset we're asking through this whole process.

Keith Rizzardi: So I'm hearing that clearly from the subcommittee. I'm also recognizing members' concerns. I'm wondering if the language that we have here on paper is too strongly worded and if there is a much softer way to make your point.

John Corbin: You're talking in the discussion part or the recommendation part Keith?

Keith Rizzardi: Both.

John Corbin: Well, I think...

((Crosstalk))

John Corbin: ...in the recommendation part, I think.

Keith Rizzardi: The recommendation actually is fairly reasonable but the text above it has, you know, some teeth to it.

John Corbin: Well, I would be willing to work with the, you know, the text above it to if people have specific thoughts about that.

Keith Rizzardi: So can we strike the MAFAC sentence, the entire second sentence.

George Nardi: More properly the subcommittee found the restrictions problematic.

John Corbin: Okay. Acceptable?

Keith Rizzardi: Is your goal still accomplished if we simply acknowledge that the rules have these limitations but in the next sentence would be aquaculture products have an advantage in shorter time to market and then the recommendation is that we simply need to take a look at the procedures to make them more market-friendly.

John Corbin: It probably is but you're suggesting MAFAC finds these problematic in the rest of that whole statement?

Keith Rizzardi: Yes, sir.

John Corbin: Okay, George, (Bob), comments on that?

(Bob Rheault): I think it's reasonable.

John Corbin: Okay, done.

(Columbus Brown): This is (Columbus). One of the concerns I have, in a farm environment you have a lot more control over things than you do when you're just going out to sea catching so I don't feel that making things parallel to the requirements on fishermen who are bringing this stuff to the dock where the

rule needs to be necessarily more generous in a farming environment because in a farming environment you do plan your harvest.

Man: (Columbus) I think it's a fair point but I don't think they're...

((Crosstalk))

John Corbin: And you know what you're getting.

((Crosstalk))

(Columbus Brown): Especially plans of mice and men so...

John Corbin: Any other comments? What I have is we'll strike that long sentence in the discussion and then the recommendation will go forward pretty much as written. Okay, hearing none, moving on to Issue 11, deals with the size of the site.

Must be twice as large as the combined area of the aquaculture system and we understand that this is to provide the farmer with space for fouling which is basically moving cases around so it lets sites recover.

So the recommendation suggests that the option for a contiguous site for fouling be sized to the oceanographic conditions of the location. The option of one or two sites or more sites be the choice of the farmer. Member comments? Hearing none, the recommendation will go forward as written.

We're on 13 now. This issue deals with aquaculture membership needed in the Gulf council and other councils with interest in aquaculture and in essence we understand that there's no aquaculture membership on the Gulf council

now and aquaculture membership on the council's clearly a concern and we have in the implementation phase.

So we're asking for the council and though to make a strong commitment to identify appropriate commercial aquaculture members through an aquaculture knowledge of aquaculture folks to put on to provide informed opinion for the aquaculture issues and also to commit to other councils to provide that same kind of knowledge to their deliberations. Member comments?

Julie Morris: John this is Julie Morris.

John Corbin: Yes.

Julie Morris: I disagree with this issue and its recommendation and I don't think it should be in our comments on the rule. It seems like this is sort of a political strategy and the appropriate of council members is a political process.

The governors nominate, the Secretary of Commerce appoints and, you know, there's lots of things that councils deal with that council members themselves don't have expertise on and we rely on our staff both the council staff and in this case it would be the NOAA aquaculture staff in order to deal with these issues so I just don't think this should be in the set of recommendations at all.

John Corbin: Okay. Other comments?

(Columbus Brown): This is (Columbus) and I agree with Julie and I'd go another step further. Although there are no designated aquaculture industry people but there are state folks who actually run hatchery programs which are a direct parallel to what functionally happens in a farm.

John Corbin: That's a far cry from understanding how to run an aquaculture business.

(Columbus Brown): Yes, it is. Well, you know, I see this as being fundamental to successful implementation of an aquaculture plan is having people with aquaculture perspectives on the council that is making decisions on amendments and changes and so on.

I realize they have access to other expertise but to have a voting member and I understand it's a political process as well but we really need to have a seat at the table and then these decisions are made but I understand the concerns.

Man: So John can you hear? Yes, I think this is an important issue. I just question whether this is the appropriate place to raise the issue and I think our body should probably have a dialogue about it and I'd encourage us to put this on an agenda for a future meeting but just for purposes of these comments and to try to get something out there on this issue, I'm wondering if we can leave this issue off.

John Corbin: Okay. With that objection we'll leave it off. Moving on, Issue 14 deals with facilitation of aquaculture permits and we understand NOAA's staff coordinator position will be the point person in the implementation of the aquaculture in federal waters in the Gulf.

And there's extremely valuable if the rules actually required a pre-application meeting for a potential applicant, a so-called scoping meeting. A lot of issues can be brought out, information shared, non-starter sites eliminated.

So the recommendation suggests NOAA amend the rules to require NOAA to organize a pre-application meeting of the potential applicant and regulatory

agencies and alternatively make it an all policy to facilitate the permit process this way. Comments?

Jess Beck: This is Jess, I just - yes, this is Jess - I just want to point out that I don't think this is NOAA's place to amend the rules. I think this is something the council would have to do as part of the application requirements so I just want to point that out and just one more thing.

I wouldn't call it a scoping meeting. Scoping meetings mean something different under the council process so I would just refer to it as a pre-application consultation or a pre-application meeting.

John Corbin: Okay. Very good. Other comments?

Jess Beck: So we're going to drop the suggestion that the rules be amended here?

John Corbin: Actually no. I think that having it there. What we're going to drop is make it the council amend the rules and then change scoping to a consultation.

Jess Beck: But again you don't want the council members...

((Crosstalk))

John Corbin: And we allowed that statement that you came up with about as soon as possible right there.

Jess Beck: Right, right and the council doesn't amend the rules, the council amends the plan.

John Corbin: Ah, very good, good point so with those changes, I'd like to move this forward. Any objections? Hearing none, Issue 15, the issue deals with process to carry out enforcement sanctions against the farm. We feel it's inadequate and recognizing that we're in deep water here with looking at government regulations and interpreting them.

But we note there does not appear to be an opportunity provided or a time set for a sanction project to remedy the problem prior to the hearing. There's no appeal process dictated and it seems to begin and end with the hearing and this seems to be very one-sided. It does not describe permit holders' rights and I would add that Hawaii law has these kinds of things in it in its source and leasing (line).

So the recommendation suggestion will clarify the sanction process for aquaculture projects. Comments? Huh. Hearing none, then the language - the issue - will move forward as written and if there are no other comments, I'll turn it back to Keith.

Keith Rizzardi: Thanks for the leadership John and all the efforts from the subcommittee members. Heidi, I think at this point I'd like to open it up for public comments if you could.

Heidi Lovett: Operator?

Coordinator: Thank you. If you would like to ask a question or have a comment, please press Star 1 on your touch-tone phone. Please record your name clearly so I may announce you. To withdraw the request, press Star 2. Once again if you have a question or a comment please press Star 1 at this time and it does take just a moment. We do have a question that comes from (Christina). Your line is open.

(Christina): Hi. I'm curious about the baseline environmental assessment that's part of the permitting process. I wonder if the committee has any information about what that process entails and what would be required of the permittees because I saw there's no reference to like NEPA or any statutes that would require specific environmental assessments. I don't know if you've had a clarification from NOAA or would ask them for it.

John Corbin: That's a very good question. I'll defer to Jess to comment on that.

Jess Beck: Sure. The plan isn't very detailed when it comes to the baseline environmental assessment. It basically defers to NOAA and to the Environmental Protection Agency since they have authority under the Clean Water Act or water quality (invasive) effects.

The rule does say - I'm sorry, the FMP - does mention that guidance should be created by these two agencies and that it would include things like how to conduct diver and video surveys and what sort of information may be looking for in terms of measuring hydrographic conditions, collecting and analyzing (benthic) sentiments and in (fauna) and also water quality characteristics.

We're in the process of creating the guidance with Environmental Protection Agency so that's something that is in the works.

(Christina): Okay. Thank you.

John Corbin: Other member comments on this issue? Did we include something in our MAFAC comments on this issue? Anyone?

Liz Hamilton: This is Liz. I don't know the connection here, I'm not the lawyer in the bunch but I do know that not having draft environmental impact statements and then which are broader and then what we call hatchery genetic management plans that are under an approved environmental impact statement has caused a lot of fodder for expensive lawsuits in the west.

John Corbin: Thank you Liz. Jess I believe you stated in a previous discussion that NEPA has already been taken care of with the programmatic EIS. Is that a correct statement?

Liz Hamilton: Correct.

John Corbin: Okay.

Liz Hamilton: Under the limits I should say that are specified in the plan, if the limits were increased there would be additional analysis that would be necessary.

John Corbin: Right, I understand. (Bob), George, any thoughts on whether we need to ask for some clarification on the baseline environment assessment requirements?

(Bob Rheault): I think it's covered in existing law.

John Corbin: Okay. So we will remain silent on that issue, okay. Keith?

Keith Rizzardi: Yes, sorry about that. Was that the lone public comment?

Heidi Lovett: Operator, are there any other comments?

Coordinator: I am showing none at this time.

Heidi Lovett: Thank you.

Keith Rizzardi: Okay. So at this point I think we've had a healthy discussion of a lot of issues. We've made a group of changes and I'm wondering if there's member comment on the commentary as a whole and John have you moved this forward?

John Corbin: You mean, have I made a motion?

Keith Rizzardi: Yes.

John Corbin: I can make a motion. I move to approve the comments and recommendations to NOAA fishery as amended.

(Bob Rheault): Second, (Bob Rheault).

Keith Rizzardi: Okay. We got a motion and a second so I'd like to have an opportunity for member discussion on the package as a whole with all the amendments that have made to try to reflect a consensus discussion.

Julie Morris: This is Julie and I have to leave but subject to seeing all of the amendments on my computer screen, once they're done I would vote in favor of the motion.

John Corbin: Okay. Thank you for your comments Julie.

Keith Rizzardi: Any other member discussion?

Paul Clampitt: Yes, this is Paul Clampitt. Yes, could we maybe we should see the finished draft here and then...

Keith Rizzardi: Well, I think we have a challenge - I think we have a problem on that point - with timing.

Paul Clampitt: October 27 for it?

Keith Rizzardi: Yes.

Woman: Correct.

Heidi Lovett: Maybe we could read through it point by point. We've been taking handwritten notes because I've been monitoring the screen and Whitney's been taking notes but we weren't modifying the document as we were going along so can we go point by point and I'll read the comment - the changes that we have?

Keith Rizzardi: That would be really helpful Heidi.

Heidi Lovett: Okay.

(Columbus Brown): Hey (Beth) this is (Columbus). I'm going to have to - Heidi I have to sign off - right.

Keith Rizzardi: Thanks (Columbus).

John Corbin: Thank you (Columbus).

Heidi Lovett: Okay. So Point Number 1 in the, I'll call it preamble, the background. We're adding examples after state waters we're adding in parentheses Maine, comma and Hawaii as examples. I have no other changes for Number 1.

No changes for Number 2. For Number 3 the last sentence of the first paragraph, we further understand the council's intent to prohibit which is a change restrict to have been changed to prohibit sourcing of brood stock from outside the Gulf.

And yes so understand the recommendation I have MAFAC suggests that NOAA develop a certification process of origin process for brood stock and fingerlings to satisfy the requirements so we are striking the middle part of that sentence, the council explore changing the requirement to permitting sourcing or brood stock from the entire Gulf. That's being struck.

John Corbin: And you can strike that first process too Heidi. I think that's a typo.

Heidi Lovett: Yes, as I read it, it felt that way so a certification of origin process.

John Corbin: Right.

Heidi Lovett: Got it. Okay. Struck. All right. No other changes there. For Number 4 there were no changes at all. Number 5 we are striking the whole recommendation portion and we're changing the second paragraph that as a comment MAFAC finds the caps on production are too low and then the rest of the paragraph is the same. Any comments?

Okay, Number 6, the recommendation has been changed. The second sentence has been struck so what's been taken out is the in addition clarify that for these timed actions, the clock would not start until the last permit is gotten, the NOAA permit so that's being taken out. The rest is the same.

Number 7, for Number 7 we are striking the last sentence of the issue statement portion, farming oysters next to fish farm, etcetera, etcetera, that has

been struck. No other changes. On Number 8 there's no changes to the background, the recommendation so three words are being struck - or four words - to generate additional revenue is being struck.

So that second sentence will read further provision should be made to allow farmers to offer recreational fishing opportunities and ocean recreation and ecotourism opportunities at the company's discretion. Number 9 I have no change. Number 10 we have everything after the first sentence of the first paragraph is struck. No other changes. Yes?

John Corbin: I think just the second sentence in the first paragraph is struck so that I thought that the second paragraph in the issue discussion was...

Heidi Lovett: Yes, I'm sorry. In the first paragraph after the first sentence, I guess it's only two sentences to it's about four line long, that is being struck.

John Corbin: Fine, got it.

Man: Okay, now this is Number 10 and you're saying starting where it's being struck, MAFAC finds?

Heidi Lovett: Yes.

Man: Okay.

Heidi Lovett: So the first sentence, the rule specifies 72-hour notice to officials before landing and a 6:00 am to 6:00 pm window to offload fish to dealers so federal authorities can be there to inspect and then the second paragraph continues.

John Corbin: Okay.

Heidi Lovett: That stays.

John Corbin: Okay.

Heidi Lovett: I have no changes to Number 11. On Number 12 under the recommendation there is one change. The word property rights is being changed to sufficient rights. Item 13 is being struck in its entirety and it's a topic that will brought up and discussed at a future MAFAC meeting.

Under 14 what I heard was just the language in the parentheses, a scoping meeting was going to be - a scoping meeting - means something else in the council process and then, sorry...

Woman: Pre-application novelties.

Heidi Lovett: Yes, it says a pre-application meeting or consultation so the I'm sorry, so there's language added, pre-application meeting or consultation for the potential applicant to bring the applicant together with the regulatory agencies, etcetera, and then in the recommendation it's being changed that MAFAC suggests the council amend the plan to require NOAA to organize a pre-application meeting and the rest is the same.

Okay. And no changes on Number 15.

Keith Rizzardi: All right, thank you.

Man: And then we had agreed something in the preamble so say that as far as the timing of these recommendations we don't want to interfere with the

implementation of the plan but that they should be considered for implementation as soon as possible.

Heidi Lovett: I would probably clarify that and say the council should consider making these changes after the final rule has been issued.

Keith Rizzardi: Perfect.

Heidi Lovett: Okay.

Man: And where does that go, at the beginning as a preamble to the list or...

Heidi Lovett: That would probably be best for the changes that you're suggesting because it seems like pretty much everything would require council - I would say something to the effect - that those actions require council action to be changed. We suggest that the council begin doing so once the final rule has been issued.

Man: And I'd like to make reference to the change process that exists as well, you know.

Heidi Lovett: Well there would be some - most of these - well some of these I should say by framework process but the other by the amendment process so I don't think that that's necessary because once they can either be changed one way or the other so I don't think it's necessary to clarify...

Man: I think I'd like to go on record to say that both those processes exist without identifying which is which in this list.

Heidi Lovett: I think - I'm sorry - go ahead Jess.

Jess Beck: I was just going to say keep in mind that there are only specific things that can be changed via framework process and that is in that last paragraph of the rule, the current version that's out there so just be cognizant to indicate what those things are.

Heidi Lovett: So I was hearing - this is Heidi - I was hearing Jess suggest a more broad statement that those actions that require some council action that the council should consider making those changes after the final rule has been issued, is that correct?

Jess Beck: That is my suggestion, correct.

Man: But what I'm saying is I'd like to at least make a reference that there is a process or several processes to make these changes without necessarily identifying or describing it in any detail. Is that outrageous or...

Heidi Lovett: So I guess am I hearing that you're from what I heard earlier it sounds like you want them to choose the most expeditious process that they are afforded?

Man: That's a good way to put it, yes, and then just name that there's an amendment process to the plan and then there's a framework process that is also described in the plan.

Heidi Lovett: Okay. So to choose the most expeditious process be that the framework or standard regulatory amendment process?

Man: Yes, I would be happy with that.

Heidi Lovett: Okay.

Keith Rizzardi: Okay. So I'm cognizant of the time here. Is there any other member comment? Okay. Sounds like no other member comment. Heidi, were there any other changes that we haven't discussed?

Heidi Lovett: Not that I have notes on.

Keith Rizzardi: Okay. Hearing no further discussion and no further edits to be made, all those in favor?

All: Aye.

Keith Rizzardi: Any opposition? Okay, hearing no opposition, the matter passes.

Heidi Lovett: Great.

Keith Rizzardi: Congratulations to the subcommittee and a great job of working through difficult issues and capturing member consensus. Passed unanimously. Thanks everyone.

Heidi Lovett: Thank you. Bye.

John Corbin: Everybody.

Keith Rizzardi: Everybody, I know it's 6:00. Thank you for hanging on for the extra half hour and we (follow it up). Have a great night.

Heidi Lovett: Okay. Thank you everyone.

Man: Thank you.

Woman: Thank you.

Man: Bye-bye.

Woman: Bye-bye.

Man: Bye.

Coordinator: Thank you. This does conclude today's conference. You may disconnect at this time.

END